

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
Ronald L. Motley (1944-2013) Jodi Westbrook Flowers / Donald A. Migliori, <i>Co-Chairs</i> MOTLEY RICE LLC James P. Kreindler, <i>Co-Chair</i> KREINDLER & KREINDLER LLP	Stephen A. Cozen, <i>Co-Chair</i> Sean Carter, <i>Co-Chair</i> COZEN O'CONNOR
Andrew J. Maloney III, <i>Co-Liaison Counsel</i> KREINDLER & KREINDLER LLP Robert T. Haeefe, <i>Co-Liaison Counsel</i> MOTLEY RICE LLC	J. Scott Tarbutton, <i>Liaison Counsel</i> COZEN O'CONNOR

VIA ECF

October 7, 2019

The Honorable Sarah Netburn, U.S. Magistrate Judge
United States District Court for the S.D.N.Y.
Thurgood Marshall U.S. Courthouse, Room 430
40 Foley Square
New York, NY 10007

Re: *In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Netburn:

We write for the Plaintiffs' Executive Committees (the "PECs") to request a two-week adjustment to the deposition schedule to accommodate the deposition of defendant Wa'el Jelaidan. Based on a number of orders about the efforts to have Mr. Jelaidan sit for his deposition, the present deadline for his deposition remains October 31, 2019 (*see, e.g.*, ECF Nos. 4532, 4582, 5179). After several email exchanges today between the PECs and Mr. Jelaidan's counsel Martin McMahon, the parties have agreed in principle to conduct Mr. Jelaidan's deposition by remote means between November 11 and November 13, 2019, subject to the Court's permission and several caveats outlined below. With the several caveats addressed below, the PECs ask that the Court modify the existing schedule to direct Mr. Jelaidan to appear for his deposition and answer questions, to be completed by November 13, 2019, or face sanctions.

Though the long history about Mr. Jelaidan's (un)willingness to participate in this MDL precedes Your Honor's tenure overseeing discovery in this MDL, Your Honor no doubt recalls addressing Mr. Jelaidan's availability for deposition previously. In May 2019, the Court ordered Mr. Jelaidan to appear for his deposition by July 31, 2019, or move for a protective order by May 31, 2019 (ECF No. 4532). In June 2019, the Court adjusted the July 31, 2019 deadline to October 31, 2019, and directed the parties to meet and confer regarding the possibility of taking Mr. Jelaidan's deposition via videoconference, relying on Mr. Jelaidan's representations about his outstanding debts and financial resources (ECF No. 4582). On September 27, 2019, responding to correspondence from the PECs (ECF No. 5176) the Court ordered Mr. Jelaidan to file a letter with the Court by October 2, 2019, confirming his availability and admonishing that failure to do so may result in sanctions (ECF No. 5179).

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Although the October 2 deadline passed without a response from Mr. Jelaidan, on Monday, October 7, 2019, Mr. McMahon reached out to the PECs to address Mr. Jelaidan's availability. By then, however, the deposition schedule had further matured and now includes in the latter weeks of October and early November, a full week of depositions in Madrid, two days of depositions in Philadelphia, depositions of at least one (and possibly two) witnesses at ADX in Florence, Colorado, and the remote deposition of Ibrahim Anwar Ibrahim from Jeddah on November 7 and 8.

Because the PECs have agreed (subject to the below caveats) to proceed with Mr. Jelaidan's deposition via remote video link from Jeddah, Saudi Arabia, the PECs propose that his deposition proceed in conjunction with the Ibrahim Anwar Ibrahim deposition, also proceeding in Jeddah, on Thursday and Friday, November 7 and 8. We have proposed, and Mr. Jelaidan's counsel have indicated his agreement, that Mr. Jelaidan's deposition proceed the following Monday and Tuesday, November 11 and 12 (we have added the additional day to account for possible scheduling difficulties due to the time difference). That schedule will, we hope, facilitate arranging a venue, court reporter, videographer, and translator for the same time period in Jeddah, Saudi Arabia.¹

The PECs agreement to conduct the deposition of Mr. Jelaidan using remote means is conditioned on the following caveats that we ask Your Honor to confirm in the Court's determination of this request. First, in advance of the deposition, Mr. Jelaidan will confirm his agreement to be subject to the Court's jurisdiction for the purpose of the deposition and to be subject to the oath to tell the truth administered for his deposition. Second, counsel appearing for Mr. Jelaidan during the deposition must be counsel of record for Mr. Jelaidan in the MDL, subject to this Court's authority. Third, the time of the deposition will correspond to the practice in this MDL of conducting remote depositions in different time zones at a time that mitigates the inconvenience on both sides—namely, for depositions in Jeddah, we have started at 7 am Eastern time, which translates to starting at 3 pm in Jeddah.² Finally, Mr. Jelaidan needs to advise the PECs immediately whether his deposition will be conducted in English or if he needs a translator.

Respectfully submitted,

COZEN O'CONNOR

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¹ The days preceding the Ibrahim deposition are unavailable due to the depositions at the ADX facility in Colorado.

² Until November 3, 2019, the time difference between New York and Saudi Arabia is 7 hours. At the cessation of DST on November 3, 2019, the difference will become 8 hours, until March 8, 2020.

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cc: The Honorable George B. Daniels, via ECF
All Counsel of Record via ECF